

## AN ACT

ENTITLED, An Act to revise certain provisions relating to the one-call notification system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 49-7A-2 be amended to read as follows:

49-7A-2. The Statewide One-Call Notification Board is established as an agency of state government administered by the Public Utilities Commission and funded solely by revenue generated by the one-call notification center. Any interest earned on money in the state one-call fund shall be deposited in the fund. The money is continuously appropriated to the board to implement and administer the provisions of this chapter. The one-call notification center may be organized as a nonprofit corporation. The one-call notification center shall provide a service through which a person can notify the operators of underground facilities of plans to excavate and to request the marking of the facilities. All operators are subject to this chapter and the rules promulgated thereto. Any operator who fails to become a member of the one-call notification center or who fails to submit the locations of the operator's underground facilities to the center, as required by this chapter and rules of the board, is subject to civil liability for any damages caused by noncompliance with this chapter. Any penalties which may be assessed by the board under this chapter shall be collected as provided by law and deposited into the one-call fund.

Section 2. That § 49-7A-5 be amended to read as follows:

49-7A-5. No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone, facsimile, in person, or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state, but not more than ten business days prior to any excavation. Notice to the one-call notification center is notice to each member of the one-call notification center, except in instances when an operator directs the one-call

notification center to require the excavator to personally contact the operator. In such instance the center shall furnish the excavator with information necessary to contact the operator. No member is required to accept notification more than ten business days prior to the excavation unless it is for planning purposes for projects that may affect the underground facilities. Once notice is given it is effective for the duration of the excavation. However, if the markings made by the operator pursuant to § 49-7A-8 disappear the excavator shall provide notice again as required by this chapter.

Section 3. That § 49-7A-6 be amended to read as follows:

49-7A-6. The notice shall contain the name, address and telephone number of the person making the notification; the name, address and telephone number of the excavator; the date and time when excavation is scheduled to begin; the depth of planned excavation; the type and extent of excavation being planned including whether the excavation involves tunneling or horizontal boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given by the excavator shall provide access to the excavator during normal business hours. The notice shall also contain location of the excavation by any one or more of the following means:

- (1) A specific street or rural address, which has a numbered address on a marked street or avenue that is publicly recorded;
- (2) A reference to a platted lot number of record; or
- (3) A specific quarter section by section, range, township and county.

The notice shall also describe the excavation area within each location. In each notice the excavator shall describe the area to be excavated from structures or roads or other known points of reference on or near the property, or in lieu of such description, an excavator may indicate in the notice that the excavator will flag or mark the site or boundaries of the excavation. If it is impractical to flag, mark, or describe the excavation, the excavator shall schedule a meeting with the operators to inform them of the extent of the excavation on the site. The one-call notification center may not confirm the notice until the excavator complies with this section.

Section 4. That § 49-7A-8 be amended to read as follows:

49-7A-8. An operator shall, upon receipt of the notice provided for in §§ 49-7A-5 and 49-7A-6, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The operator shall respond no later than forty-eight hours after receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually agreed to by the parties. Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools and shall protect and support the facility prior to further excavation with mechanical equipment.

Section 5. That § 49-7A-11 be amended to read as follows:

49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions shall be taken to protect the underground facilities. In such a case, the excavator shall give notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency exists, and each member shall as soon as practical or no longer than within four hours provide to the excavator all location information reasonably available. Any operator who determines that its facilities will not be impacted by the notice, shall immediately notify the excavator that the operator's facilities are clear from the excavation. An excavator requesting a location due to an emergency shall provide the name and the phone number of a person who has knowledge regarding the excavation. Any operator or excavator who violates this section is liable for any damages incurred.

Section 6. That § 49-7A-12 be amended to read as follows:

49-7A-12. If any underground facility is damaged, dislocated, or disturbed in advance of or during excavation work, the excavator shall immediately notify the operator of the facility, or, if unknown, the one-call notification center of such damage, dislocation, or disturbance. No excavator may

conceal or attempt to conceal such damage, dislocation, or disturbance, nor may that excavator attempt to make repairs to the facility unless authorized by the operator of the facility. The board may assess a civil penalty of up to one thousand dollars against any excavator who knowingly violates this section.

Section 7. That § 49-7A-16 be repealed.

Section 8. That § 49-7-5 be repealed.

Section 9. That § 49-7-6 be repealed.

Section 10. That § 49-7-7 be repealed.

Section 11. That § 49-7-8 be repealed.

Section 12. That § 49-7-9 be repealed.

Section 13. That § 49-7-10 be repealed.

Section 14. That § 49-7A-4 be amended to read as follows:

49-7A-4. The One-Call Notification Board shall by rules, promulgated pursuant to chapter 1-26, establish the procedures to operate a nonprofit one-call notification center, establish a notification process, establish a system of standard colors for marking, establish a competitive bidding procedure to select a vendor to provide the notification service, and establish a procedure whereby members of the one-call notification center share in the costs of the one-call notification center.

Section 15. That § 49-7A-3 be amended to read as follows:

49-7A-3. The one-call notification center shall be governed by an eleven member board who shall serve without pay. The board shall consist of one member representing telecommunication companies offering local exchange service to less than fifty thousand subscribers; one member representing telecommunication companies offering local exchange service to fifty thousand or more subscribers; one member representing rural water systems; one member representing rural electric cooperatives; one member representing investor-owned electric utilities; one member representing investor-owned natural gas utilities; one member representing community antenna television systems; one member

representing municipalities; one member representing underground interstate carriers of gas or petroleum; and two members representing contractors who perform excavation services. The board shall be appointed by the Governor and shall serve staggered three-year terms.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1022

\_\_\_\_\_  
Chief Clerk  
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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1022

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 19\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State